

APPENDIX L

Attorney General Opinion on Transportation Under ECO's and TDO's



COMMONWEALTH of VIRGINIA

DEPARTMENT OF

Mental Health, Mental Retardation and Substance Abuse Services

TIMOTHY A. KELLY, Ph. D.
COMMISSIONER

MEMORANDUM

P. O. BOX 1797
RICHMOND, VA 23214
(804) 786-3921
(804) 371-8977 VOICE/TDD

TO: State MHMRSAS Board Members
Community Services Boards Executive Directors
DMHMRSAS Facility Directors
Central Office Directors
Management Team

FROM: Timothy A. Kelly *Timothy A. Kelly / rek*

DATE: April 23, 1996

SUBJECT: Attorney General Opinion to Honorable Robert B. Edwards - Transportation of Persons under ECOs and TDOs

Please find attached a copy of an official Opinion issued recently by Attorney General James S. Gilmore, III, to Judge Robert B. Edwards. This Opinion provides that neither sheriffs' offices nor police departments have primary responsibility to transport persons subject to an emergency custody order or temporary order of detention. Any law enforcement officer requested by the court to execute an ECO or TDO should do so without delay. A sheriff's office or a police department may not limit its execution of these orders to certain times of day.

The Opinion also provides that, should a sheriff be ordered to provide transportation of a person who has been committed to a hospital, transportation must commence within six hours of notification to the sheriff of the certification for admission.

Please share this Opinion with your staff involved in the civil commitment process and any other interested parties.

TAK:ibs

Attachment

pc: The Honorable Robert C. Metcalf
Jane D. Hickey
Julie A. Stanley



COMMONWEALTH of VIRGINIA

James S. Gilmore, III
Attorney General

Office of the Attorney General
Richmond 23219

900 East Main Street
Richmond, Virginia 23219
804 - 788 - 2071
804 - 371 - 8946 TDD

February 15, 1996

The Honorable Robert B. Edwards
Judge, Isle of Wight County General District Court
P.O. Box 122
Isle of Wight, Virginia 23397-0122

My dear Judge Edwards

You ask several questions regarding the transportation of persons subject to issuance of either an emergency custody order ("ECO") or an involuntary temporary detention order ("TDO").

You relate that Obici Hospital in Suffolk, Virginia, operates a psychiatric unit serving the Fifth Judicial District and other areas. You also relate that a mental patient subject to an ECO issued in the Fifth Judicial District usually is transported from the site of execution of the ECO to Western Tidewater Mental Health Center in Suffolk for the evaluation required by § 37.1-67.01 of the *Code of Virginia*. Thereafter, if a TDO is issued pursuant to § 37.1-67.1, the patient is transported from Western Tidewater Mental Health Center to either Obici Psychiatric Care Center or other psychiatric facilities located outside the City of Suffolk. Furthermore, you relate that, effective July 1, 1995, the sheriff for the City of Suffolk has refused to transport any mental patients subject to ECOs and TDOs, except during the nonlegal holiday hours from 8 a.m. to 5 p.m., Monday through Friday. By prior agreement between the sheriff and the chief of police, the Suffolk Police Department handles the execution of ECOs in Suffolk and provides transportation to Western Tidewater Mental Health Center for the evaluation. You advise that before July 1, 1995, a deputy sheriff would relieve the police officer, remain with the patient through the evaluation, and transport the patient pursuant to issuance of a TDO. Transportation of ECO and TDO patients in Suffolk is affected, because the sheriff's office refuses to provide transportation, except during the nonlegal holiday hours stated above, and the police department will agree only to provide transportation from the site of execution of an ECO to the site of the evaluation.

You first ask whether the sheriff's office or the police department has primary responsibility for transporting ECO and TDO patients under the provisions of §§ 15.1-131, 15.1-138, 37.1-67.01 and 37.1-67.1. Before the 1995 Session of the General Assembly, § 37.1-67.1 authorized the execution of both ECOs and TDOs, detailing the processes by which such orders were to be issued and served. As a result of the 1995 Report of the Joint Legislative Audit and Review Commission ("JLARC report"),¹

¹See 1 H. & S. DOCS., REPORT OF THE JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION ON REVIEW OF THE INVOLUNTARY COMMITMENT PROCESS, HOUSE DOC. NO. 8 (1995) [hereinafter H. DOC. NO. 8]. The JLARC report led to numerous Code revisions, including the enactment of § 37.1-67.01 and the amendment of §§ 37.1-67.1, 15.1-131 and 15.1-138. See Ch. 844, 1995 Va. Acts Reg. Sess. 1788.

substantial changes were made to Virginia's civil commitment process, including the enactment of § 37.1-67.01, governing the process by which ECOs are issued and executed, and the revision of § 37.1-67.1, providing authority under which TDOs are handled.²

Neither the provisions of § 37.1-67.01 nor § 37.1-67.1, however, explicitly place any greater burden on the local sheriff's office than on the local police.³ Both provisions refer to a "law-enforcement officer" as the individual permitted to transport persons for evaluation or treatment following issuance of either an ECO or a TDO.⁴ Although the General Assembly does not define the term "law-enforcement officer" in § 37.1-67.01 or § 37.1-67.1, §§ 15.1-131 and 15.1-138 specify that police officers may be involved in the transportation process, and that they are included as "law-enforcement officers" referred to in §§ 37.1-67.01 and 37.1-67.1.⁵

Sections 15.1-131 and 15.1-138 are contained in Chapter 3 of Title 15.1, and relate to the authority of police to execute ECOs and TDOs in the manner specified for law-enforcement officers under § 37.1-67.01 or § 37.1-67.1. The first sentence of § 15.1-131 provides:

Whenever the necessity arises for the enforcement of laws ... during the execution of the provisions of § 37.1-67.01 or § 37.1-67.1 relating to orders for temporary detention or emergency custody for mental health evaluation ... the policemen and other officers, agents and employees of any county, city or town ... may, together with all necessary

²See 1995 Va. Acts, *supra*, at 1791-94. Former references to ECOs in § 37.1-67.1 have been deleted. See *id.* at 1792-93.

³Compare §§ 37.1-67.01 and 37.1-67.1 (referring to transportation of any person under ECO or TDO by "law-enforcement officer," and containing no requirement that sheriff, as opposed to police, transport such person) with § 37.1-71 (providing that, in absence of transportation alternatives, sheriff should transport persons certified for admission to hospital under §§ 37.1-67.3, 37.1-67.4 or § 37.1-67.6); cf. 1987-1988 Op. Va. Att'y Gen. 78, 79-80 (concluding that sheriff and police department share responsibility for service of TDO).

⁴Section 37.1-67.01 provides: "A *law-enforcement officer* who ... has probable cause to believe that a person meets the criteria for emergency custody ... may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization" (Emphasis added.) Section 37.1-67.01 also allows "[a] *law-enforcement officer* ... lawfully [to] go to or be sent beyond the territorial limits of the county, city or town in which he serves to any point in the Commonwealth for the purpose of executing an order of emergency custody pursuant to this section." (Emphasis added.)

Section 37.1-67.1 similarly provides that "[a] *law-enforcement officer* may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any order for temporary detention pursuant to this section." (Emphasis added.)

⁵A prior opinion of the Attorney General analyzes former statutes and concludes that the then existing language of "§ 37.1-67.1 should be read to refer to a sheriff as *the officer* who is required to execute an order of temporary detention." 1979-1980 Op. Va. Att'y Gen. 314, 314 (emphasis added). The 1980 opinion has been effectively negated, however, by more recent statutory language.

equipment, lawfully go or be sent beyond the territorial limits of such county, city or town ... to assist in meeting such emergency or need⁶ [Emphasis added.]

Section 15.1-138 clearly establishes the function of a police officer in executing ECOs and TDOs. Although § 15.1-138 initially provides that “[s]uch policeman shall have no power or authority in civil matters,” it also creates an exception “that a policeman of a county, city or town may execute and serve an order of temporary detention and an emergency custody order and may exercise such other powers as may be specified for law-enforcement officers pursuant to § 37.1-67.01 or § 37.1-67.1.”⁷

By virtue of this exception, the General Assembly has authorized local police to serve civil warrants for emergency custody or temporary detention. Although the General Assembly has not specifically provided for either police departments or sheriffs’ offices to assume primary responsibility for serving ECOs or TDOs, survey responses in the JLARC report from 44 police chiefs and 114 sheriffs found that both police officers and sheriffs’ deputies were being used by “magistrates and special justices to transport individuals when ECOs and TDOs are issued.”⁸ The JLARC report concludes that “[l]aw enforcement officers should continue to transport individuals under ECOs and TDOs, because the process is often initiated by an officer and the dangerousness of the individual may not be known.”⁹ The JLARC report acknowledges, however, that sheriffs’ deputies may “remain the primary providers of transportation for temporary detention orders.”¹⁰

It is my opinion that the General Assembly has not placed on either sheriffs’ offices or police departments the primary responsibility for transporting persons under ECOs or TDOs, but that, as a practical matter, as noted in the JLARC report, sheriffs may be involved most often with transportation pursuant to a TDO.¹¹ I am of the opinion that, under the provisions of §§ 37.1-67.01 and 37.1-67.1, any law-enforcement officer requested by a court to execute an ECO or TDO should do so, without delay.

⁶The General Assembly amended § 15.1-131 in the 1995 Session to cross-reference the specific authorization of the use of “law-enforcement officers” in the execution of ECOs in § 37.1-67.01. See 1995 Va. Acts, *supra* note 1, at 1788. Compare Ch. 566, 1992 Va. Acts Reg. Sess. 726, 726 (amending § 15.1-131 to allow police to go beyond territorial limits of their respective jurisdictions to execute both ECOs and TDOs, and containing specific reference to § 37.1-67.1, which, at time of amendment, related to both ECOs and TDOs) with Ch. 779, 1984 Va. Acts 2121, 2127-28 (containing no mention of police involvement in either ECO or TDO process in amendment to § 15.1-131).

⁷See also Ch. 38, 1982 Va. Acts Reg. Sess. 136, 137 (earliest amendment authorizing police officers to execute and serve TDOs issued pursuant to § 37.1-67.1). At its 1992 Session, the General Assembly further amended that section to explicitly authorize policemen to execute ECOs. See Ch. 729, 1992 Va. Acts Reg. Sess. 1108, 1109.

⁸H. Doc. No. 8, *supra* note 1, at 11-12.

⁹*Id.* at IV; see *id.* at 56. The 1995 JLARC report recognizes the significant costs associated with transporting persons under ECOs and TDOs, but projects that with the recommended, and now enacted, statutory changes, those costs will diminish. *Id.* at 36 (reporting that sheriffs and police chiefs who responded to study estimated they spent “\$1.5 million making 18,000 mental health transports in FY 1993”).

¹⁰*Id.* at 76.

¹¹See *id.* at 12.

You next ask whether the sheriff is required to transport mentally ill patients subject to ECOs and TDOs without regard to the time of such transportation, but at a time when police officers are not allowed to provide such transportation. Section 37.1-67.01 unambiguously provides that an order for emergency custody must be executed "within four hours of its issuance," after which it "shall be void and shall be returned unexecuted to the office of the clerk." In addition, a person may be held in custody only until "a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours."¹² Consequently, the transporting officer in a case involving emergency custody must act within four hours to execute the order. In addition, within a second four-hour period, he must deliver the individual in his custody for psychiatric evaluation. Detention under further order or release must occur within that same time frame.

The provisions of § 37.1-67.1 provide more latitude within which to execute a TDO. A TDO must be "executed within twenty-four hours of its issuance, or within such shorter period as is specified in the order, after which it shall be void and shall be returned unexecuted."¹³ A petition for which no TDO or other process is served within ninety-six hours is void and must be returned to the clerk of the issuing court.¹⁴

It is well-settled that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."¹⁵ It is equally well-settled that "[a statute] which is plain needs no interpretation."¹⁶ It is, therefore, my opinion that these requirements do not allow either a sheriff's office or a police department to limit its ECO- or TDO-related activities to specific, predetermined hours of the day only. Law-enforcement officers should act within a sufficient time frame, in response to court orders, to accomplish timely execution of ECOs and TDOs, and they should provide transportation within the periods specified by the court order or these statutes.

You next ask whether a magistrate has the authority under the provisions of §§ 37.1-67.01 and 37.1-67.1 to designate or order either the sheriff's office or the police department to provide transportation if there is no primary responsibility on either to transport mentally ill patients subject to ECOs and TDOs. Neither statute prevents a magistrate from designating the law-enforcement office to provide transportation for a patient under an ECO or a TDO. Section 37.1-67.01 provides that a magistrate may issue an ECO "requiring any person within his judicial district to be taken into custody and transported to a convenient location" for evaluation of that person's mental condition to assess the need for hospitalization. Likewise, § 37.1-67.1 allows a magistrate to issue a TDO, which may include transporting the person to a facility for medically necessary evaluation or treatment before placement. Neither statute specifies to whom the order must be directed.

¹²Section 37.1-67.01.

¹³Section 37.1-67.1. This section also allows subsequent orders to be issued "upon the original petition within ninety-six hours after the petition is filed."

¹⁴Section 37.1-67.1.

¹⁵*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); Op. Va. Att'y Gen.: 1994 at 93, 95; 1993 at 256, 257.

¹⁶*Winston v. City of Richmond*, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954); see also 1993 Op. Va. Att'y Gen., *supra*, and opinions cited therein.

As noted above, the JLARC report found the practice within the Commonwealth to be that magistrates and special justices order either a sheriff or a police officer to execute such orders and to transport the affected individuals.¹⁷ Sheriffs' deputies may "remain the primary providers of transportation"¹⁸ for TDOs, as noted above, but police officers may be equally, if not more, involved in transporting persons in emergency custody situations, because they are more likely to respond to emergency calls from the public.

Your final question is whether a sheriff is required to commence the transportation of a person, certified for hospital admission under § 37.1-67.3, within six hours of being notified of the commitment occurring at 4:45 p.m., or thereafter, as provided in § 37.1-71. Section 37.1-71 allows a judge to determine whether the sheriff should transport the person to the proper hospital. Such certification may be issued by the judge under § 37.1-67.3 or § 37.1-67.4, or following appeal pursuant to § 37.1-67.6, and depending on a determination as to the person's dangerousness, the judge may order alternative means of transportation.¹⁹ Nonetheless, should the judge order transport by the sheriff, § 37.1-71 succinctly and unambiguously requires that "[i]n no event shall transport commence later than six hours after notification to the sheriff of [certification for admission]."

It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous.²⁰ The clear language of this statute requires no statutory interpretation.²¹ When the meaning of a statute is "perfectly clear and definite, effect must be given to it."²² Accordingly, it is my opinion that § 37.1-71 requires the sheriff to commence transporting any person certified for admission to a hospital within six hours of notification of such certification by the court, regardless of the time of day the certification is made.

With kindest regards, I am

Very truly yours,



James S. Gilmore, III
Attorney General

6:20/54-320

¹⁷See H. DOC. NO. 8, *supra* note 1, at 11-12.

¹⁸*Id.* at 76.

¹⁹Section 37.1-71.

²⁰See *Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); Op. Va. Att'y Gen.: 1994, *supra* note 15; 1992 at 99, 100 (plain language of statute limits amount of fee celebrant may charge to act of performing marriage ceremony only).

²¹See, e.g., *Winston v. City of Richmond*, 196 Va. at 408, 83 S.E.2d at 731.

²²*Temple v. City of Petersburg*, 182 Va. at 423, 29 S.E.2d at 358; see also Op. Va. Att'y Gen.: 1994, *supra* note 15; 1993, *supra* note 15.